

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

RANDY PALMER,

Petitioner,

v.

RONALD FRAKER, et al.,

Respondents.

No. C09-5703 RJB

ORDER ADOPTING REPORT AND
RECOMMENDATION DENYING WRIT
OF HABEAS CORPUS

The Magistrate Judge recommends this 28 U.S.C. § 2255 writ of habeas corpus be denied and this action dismissed with prejudice. The Petitioner has filed objections to the Report and Recommendation.

Petitioner's objections are simply a restatement of the argument that has been exhaustively and thoroughly analyzed by the Magistrate Judge. As detailed by the Report and Recommendation, in his first and second grounds for relief, Mr. Palmer argued that the state trial judge's imposition of consecutive terms based upon judicial (rather than jury) fact-finding employing a preponderance-of-the-evidence standard (rather than beyond reasonable doubt) violated his due process and Sixth Amendment rights as announced in the Supreme Court in *Apprendi v. New Jersey*, 530 U.S. 466 (2000) and *Blakely v. Washington*, 542 U.S. 296 (2004). The Magistrate Judge properly denied these claims as the Sixth Amendment permits trial judges

1 to make the predicate fact findings in determining whether sentences for discrete offenses will be
2 imposed consecutively or concurrently. See *Oregon v. Ice*, 555 U.S. ___, 129 S. Ct. 711 (2009).

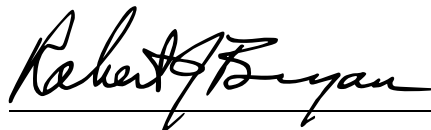
3 In his fourth ground for relief, Mr. Palmer claimed that there was insufficient evidence
4 presented at trial to support the guilty verdicts for the three rape counts and the two solicitation
5 counts. The Magistrate Judge correctly concluded that the Court of Appeals adjudication of Mr.
6 Palmer's insufficiency claim was neither contrary to, nor an unreasonable application of, the
7 governing legal standard for review of such claims. See *Jackson v. Virginia*, 443 U.S. 307 (1979).
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9 Regarding Mr. Palmer's third ground for relief, the Magistrate Judge properly found that
10 Petitioner failed to allege an Eighth Amendment challenge to his conviction in the state court
11 proceedings. In this habeas proceeding Mr. Palmer has failed to show cause and prejudice to excuse
12 his procedural default.

13 The Court, having reviewed the petition for writ of habeas corpus, the response, the
14 Report and Recommendation of Magistrate Judge Karen L. Strombom, objections to the Report
15 and Recommendation, and the remaining record, does hereby find and ORDER:
16

- 17 (1) The Court adopts the Report and Recommendation;
- 18 (2) Petitioner's writ of habeas corpus (Dkt. 1) is **DENIED** and this action is
19 **DISMISSED WITH PREJUDICE**; and
- 20 (3) The Clerk is directed to send copies of this Order to Petitioner, counsel for
21 Respondent and to the Hon. Karen L. Strombom.

22 DATED this 7th day of May, 2010.

23 

24 ROBERT J. BRYAN
25 United States District Judge
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